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15 IN THE SUPERIOR COURT OF THE STATE OF ARIZONA
16 IN AND FOR THE COUNTY OF YAVAPAI

17 STATE OF ARIZONA,

18 Plaintiff,

19 vs.

20 STEVEN CARROLL DEMOCKER,

21 Defendant.

) No. P1300CR20081339

) Div. 6

) **OBJECTION TO (1)**
) **APPLICATION OF WESTERN**
) **NEWS & INFO, INC., FOR**
) **LEAVE TO INTERVENE FOR**
) **LIMITED PURPOSE OF**
) **MOVING TO UNSEAL COURT**
) **RECORDS AND PROCEEDINGS**
) **AND (2) VERIFIED PETITION**
) **TO UNSEAL RECORDS AND**
) **COURT PROCEEDINGS**

) (Assigned to the Honorable Warren
) R. Darrow)

22
23
24
25
26 Steven DeMocker, by and through counsel, hereby responds to the "Application
27 of Western News & Info, Inc. for Leave to Intervene for the Limited Purpose of Moving
28 to Unseal Court Records and Proceedings," filed October 5, 2010 (the "Application" or

SUPERIOR COURT
COUNTY OF YAVAPAI, ARIZONA

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CLERK

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BY: _____

1 “WNI Motion”) . We also respond to the “Verified Petition to Unseal Records and
2 Court Proceedings, and Motion to Join in Oral Argument,” filed on October 11, 2010,
3 William E. (Bill) Williams (the “Williams Motion”). For the reasons that follow, we
4 oppose the requested relief sought in these two pleadings.
5

6 MEMORANDUM

7 Questions regarding which documents and which proceedings should and should
8 not have been sealed have been central to this case throughout. Both Judges Lindberg
9 and Darrow have been called on to make a now virtually uncountable number of
10 decisions on this subject. Some of those decisions are captured in Exhibit 1 to the
11 Application. Some have been captured in pleadings and minute orders; others have
12 been made by the Court in the course of sealed proceedings. We believe it is reasonable
13 to say that throughout these proceedings the Court has endeavored to balance the
14 important considerations identified by the WNI and Williams Motions, i.e., the First
15 Amendment, and the right to a fair trial for Mr. DeMocker. We do not say that the
16 Court has struck the correct balance each time. Indeed, some of the Court’s decisions
17 on these questions may become the subject of issues raised on appeal if Mr. DeMocker
18 is convicted in this case. In this regard, we waive none of Mr. DeMocker’s rights. We
19 do contend, however, that to now unseal any of the pleadings or proceedings that have
20 been sealed to date would prejudicially damage Mr. DeMocker’s rights. At the very
21 least, statements were made by counsel relying on the Court’s determination that the
22 proceedings were sealed. Those may have been altered or not made at all in an unsealed
23 proceeding.
24

25 Our initial review of the list of documents identified by WNI suggests that there
26 may be at least five categories of documents at issue. Probably the largest number of
27 documents relate to what we might call “jury issues.” The Court’s Unsealed Minute
28 Order of May 7, 2010 addresses this issue and was not challenged at the time it was

1 made or in the five months of trial that followed. The Court's Order declining to bar the
2 press and public from attendance during the voir dire process also addresses these
3 issues. Unsealed Minute Order of April 28, 2010.
4

5 A second category of decisions might be described as counsel-related issues.
6 This category, which we will not further label in this unsealed pleading, could be
7 described as covering two time periods – one beginning around July 10, 2010 and
8 running at least through August 13, and a more recent set of proceedings that have taken
9 place over the last few weeks, beginning around September 20. Reasons of prejudice to
10 the accused, that were plainly apparent to the Court and to all counsel, including the
11 State, when these decisions to seal were made, make it obvious that continuing to seal
12 these materials is essential and should not now be reconsidered.

13 A third category of decisions relate to issues of indigency and to the operation of
14 Rule 15.9. These proceedings were sealed pursuant to that Rule and the Court's
15 acknowledgement of the necessity of sealing was set forth on the record in a timely
16 manner and unobjected to by anyone until now, more than a year later. Unsealed
17 Minute Order of July 6, 2009.
18

19 A forth category might be described as relating to the admissibility or
20 inadmissibility of evidence, the public disclosure of which might harm the defendant's
21 right to a fair trial.

22 The remaining sealed documents and proceedings might be described as relating
23 to privacy concerns of jurors, prosecution and defense counsel, court personnel, and the
24 Court. To some extent, these five categories may overlap with each other, but we found
25 this a helpful way to attempt to look at the specific sealed documents and proceedings.
26

27 Having gone through that exercise, however, we have concluded that it is not
28 possible now to revisit each decision. While proceedings have been recorded, not all

1 recordings have been transcribed – often because no request has been made. Now, more
2 than five months into the trial, and two years from indictment, it is not reasonably
3 possible to reconstruct each decision.
4

5 Representatives of WNI have been present in court throughout this time period
6 and have not, until now, challenged the constitutionality or even the propriety of these
7 decisions. Whenever either WNI or the electronic media covering the trial have raised
8 questions, they have been addressed. Many issues have been addressed under Rule 122
9 and more generally as a matter of the Court’s governance of the proceedings on a day-
10 to-day basis. Contact with media representatives has occurred on virtually a daily basis,
11 and often those contacts have been initiated at the Court’s request and transmitted
12 informally to the media, the press and the public by the bailiff. Undersigned counsel
13 cannot recall an occasion on which any timely press objection has gone unheeded by the
14 Court.

15 In this connection, we are reminded of the recent and highly publicized trial of
16 former Chicago Mayor Rod Blagojevich. Delays by the press in seeking the release of
17 juror names complicated the ability of the Seventh Circuit in that case to address the
18 claims of the press. See *United States v. Blagojevich*, No. 10-2359 (Order issued July 2,
19 2010). The court in that case was asked to address the very narrow issue of disclosing
20 juror names, yet the need for timely objection, and the related need to have a hearing,
21 plainly made even that comparatively narrow issue a complex undertaking. We frankly
22 have no idea how a similar undertaking to hold hearings on decisions already made,
23 sometimes over a year ago, could be achieved at this stage of the trial.
24

25 We suggest a two-part solution. First, the Court should decline to revisit any
26 decision already made with respect to the sealing of documents and proceedings.
27 Second, the Court should invite WNI, Mr. Williams, and any other applicant to make
28 timely objection to any future decisions to seal proceedings so that this Court can

1 prospectively address them. Of course, any interested person including the press and
2 other media would be free to submit requests once this trial is over to unseal any
3 particular aspect of this case. Informed counsel and the Court can address any such
4 requests when and if they arise. Deferral of publication is often recognized as an
5 appropriate way to balance free press and fair trial concerns. Certainly, unsealing these
6 materials at this point in the trial will compromise the rights of Mr. DeMocker to a
7 constitutionally fair trial.
8

9 Beyond these general observations, counsel for Mr. DeMocker are not prepared
10 to respond further at this time.

11 DATED this 15th day of October, 2010.

12
13 By: 

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21
22 **ORIGINAL** of the foregoing hand delivered for
filing this 15th day of October, 2010, with:

23 Jeanne Hicks
24 Clerk of the Court
25 Yavapai County Superior Court
120 S. Cortez
26 Prescott, AZ 86303
27
28

1 **COPIES** of the foregoing hand delivered this
2 this 15th day of October, 2010, to:

3 The Hon. Warren R. Darrow
4 Judge Pro Tem B
5 120 S. Cortez
6 Prescott, AZ 86303

7 Joseph C. Butner, Esq.
8 Jeffrey Paupore, Esq.
9 Prescott Courthouse basket

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11 3345581